

HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
Plaintiff,

v.

MOTOROLA, INC., et al.,
Defendants.

No. C10-1823-JLR

[PROPOSED] ORDER GRANTING
MICROSOFT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

NOTED: Friday, September 9, 2011

MOTOROLA MOBILITY, INC., et al.,
Plaintiffs,

v.

MICROSOFT CORPORATION,
Defendant.

This matter came before the Court on the Motion of Microsoft Corporation for Partial Summary Judgment against Motorola, Inc. (n/k/a Motorola Solutions, Inc.), Motorola Mobility, Inc., and General Instrument Corporation (collectively "Motorola") that:

1. Motorola entered into binding contractual commitments with the Institute of Electrical and Electronics Engineers ("IEEE") and the International Telecommunications Union ("ITU"), committing to license its declared-essential patents on reasonable and nondiscriminatory ("RAND") terms and conditions;

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2. Microsoft is a third-party beneficiary of Motorola's contracts with the IEEE and ITU;
3. When offering a license to a third-party beneficiary of Motorola's commitments to the IEEE and ITU such as Microsoft, Motorola must offer RAND terms and conditions; and
4. Motorola's offers to Microsoft to license Motorola's H.264 and 802.11 declared-essential patents breached Motorola's contractual commitments to the IEEE, ITU, and Microsoft because no reasonable trier of fact could conclude that Motorola's offers were on RAND terms and conditions.

The Court heard the oral argument of counsel and considered the following pleadings filed in support of and in opposition to the Motion:

1. Microsoft's Motion for Partial Summary Judgment;
2. Declaration of Christopher T. Wion in Support of Microsoft's Motion for Partial Summary Judgment and exhibits attached thereto;
3. Declaration of Roy Harlin in Support of Microsoft's Motion for Partial Summary Judgment;
- 4.
- 5.
- 6.
- 7.
- 8.

Having considered the above pleadings and materials, the argument of counsel, and being otherwise fully advised,

IT IS ORDERED that Microsoft's Motion for Partial Summary Judgment is GRANTED in its entirety.

DONE IN OPEN COURT this ____ day of _____, 2011.

HONORABLE JAMES L. ROBART

Presented by:

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CERTIFICATE OF SERVICE

I hereby certify that on August 18th 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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Motorola Mobility, Inc. and General Instrument Corporation**

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